

**IN THE HIGH COURT OF UTTARAKHAND**  
**AT NAINITAL**

**Writ Petition (Criminal) No. 1974 of 2022**

Ashutosh Negi  
and others.

.....Petitioners.

Through: Ms. Pushpa Joshi, learned Sr. Advocate  
with Shri Navnish Negi, learned counsel for the  
petitioners.

-Versus-

State of Uttarakhand  
and others.

.....Respondents.

Through: Shri S.N. Babulkar, learned Advocate  
General with Shri J. S. Virk, learned Deputy  
Advocate General for the State of Uttarakhand.  
Shri Rakesh Thapliyal, learned Deputy Solicitor  
General of India with Shri Lalit Sharma, learned  
Standing Counsel for CBI.

Date of Hearing :26.11.2022

Date of Judgment : 21.12.2022

**Shri Sanjaya Kumar Mishra, J.**

1. Writ petition was originally filed by the petitioner no. 1, who happens to be the informant in case crime no. 01 of 2022 registered under Section 365 of the Indian Penal Code, 1860 (hereinafter referred to as "the Penal Code" for brevity) at Police Station - Laxmanjhoola Block, Yamkeshwar, District Pauri Garhwal. By virtue of order dated 11.11.2022, an application for intervention filed by the parents of the deceased girl was allowed and they are arrayed as petitioner nos. 2 and 3 to the writ petition.

2. By filing this writ petition, the petitioners have prayed for issuance of a writ of Mandamus commanding the respondents to transfer the investigation of the case registered by SHO, Police Station - Laxmanjhoola, Block - Yamkeshwar, District - Pauri

Garhwal to the Central Bureau of Investigation (hereinafter referred to as "CBI" for brevity). Petitioners have further prayed for filing of the status report of the investigation before this Court. Petitioners allege that main accused in this case namely Pulkit Arya, happens to be a high profile and mighty person, being the son of Ex-State Cabinet Minister and owner of Vanantra Resort wherein the deceased young girl (name withheld) was an employed as Receptionist about 20 days prior to the date of incident. The case of the petitioners is that the deceased girl went missing from the aforesaid resort since 19.09.2022 and said Pulkit Arya filed a missing report before the Revenue Authorities. A missing report was also lodged by the father of the deceased girl before Patwari Circle Yamkeshwar within whose territorial jurisdiction the resort was situated. The issue of missing of the said deceased girl was also reported in different news channels. Thereafter, petitioner no. 1 lodged a report before Revenue Inspector on 19.09.2022. When the matter was reported in the social media, the case was transferred to regular police and the regular police took over the charge of investigation of the case and registered the case, as Crime No. 1 of 2022 by the SHO, Police Station - Laxmanjhoola. Petitioner no. 1 happens to be a news reporter and is operating web news portal and publishing a fortnightly newspaper. He took up interest in the case and brought to the notice of all concerned and the case became widely reported and sensitive one. The regular police in the course of investigation on 23.09.2022 arrested the accused Pulkit Arya, Ankit and Saurabh and added the offence under Section 302 IPC. The accused persons allegedly confessed before the investigating officer about the commission of crime. In the course of investigation, one eye witness namely Abhinav, a house keeping staff of Vanantara Resort stated that on the fateful date, she was

raped by Pulkit Arya and Ankit and thereafter, she was forcefully taken from resort. Her last telephonic conversation with the staff of resort where she seems to be in extreme fear of being murdered and she was seeking help from his colleague / staff of the resort and she was murdered on 18.09.2022. There are certain text messages of the deceased with her friend and all these came to fore of Senior Superintendent of Police, Pauri Garhwal. The State Government constituted a Special Investigation Team (hereinafter referred to as "SIT" for brevity) headed by a senior IPS Officer in the rank of DIG. Based upon the confessional statement of the accused, dead body of the deceased was recovered from Cheela Barrage on 24.09.2022. The petitioners further allege that there was audio conversion and chat messages of deceased girl with her friend that she was being forced to serve sexually to some high profile guests of the resort. She denied to oblige and resisted such attempts. The specific case of the petitioners is that the identity of said high profile guest has not been revealed despite the fact that he is the main accused, which has led to the murder of the deceased. It is also specifically alleged that investigating agency is trying to conceal name of the high profile guest, therefore, petitioners have serious doubt on the investigation done in the case and, therefore, they prayed that investigation should be handed over to CBI. It is further case of the petitioners that the room in which deceased was allegedly assaulted, was not forensically examined and same was deliberately demolished on the direction of local Member of Legislative Assembly (MLA) Ms. Renu Bisht. It is further case of the petitioners that demolition of resort was done just to destroy the evidence. Till date, neither the DVR nor the telephone of the accused has been recovered. A copy of the post mortem report

has also not been supplied to the petitioners and petitioners are receiving life threats from unknown numbers for so many weeks.

3. At the time of hearing of the matter as fresh, the State was noticed. It is noted here that accused persons have not been made party to the writ petition as respondents.

4. A counter affidavit has been filed by SIT. It is stated that immediately after the investigation was handed over to the SIT, statement of employees of Vanantra Resort and other witnesses were recorded under Section 161 (hereinafter referred to as “the Code” for brevity) and statement of crucial witnesses were recorded under Section 164 of the Code. On the basis of statements and evidence, offence under Section 354A of the Penal Code has been added on 05.10.2022. Further on the basis evidence collected, Section 5 (1) b of the Immoral Traffic (Prevention) Act, 1956 has been added to the investigation and offence under Section 365 of the Penal Code has been deleted on 08.10.2022. A call detail report and internet protocol detail record analysis of the deceased and the accused’s mobile has been done. The post mortem examination has been done. Post mortem report of the deceased has been duly studied and its exhibits have been sent to forensic laboratory for forensic, chemical and serological examination. DVR, hard disc and mobile phone of the accused and the witnesses has been sent to CFSL, Chandigarh for forensic analysis. Reports of all these examinations are still awaited. From the statements of the witnesses, call recording whatsapp chat messages of the deceased, it has been revealed that accused Pulkit Arya, Saurabh Bhaskar, Ankit @ Pulkit Gupta harassed the deceased at Vanantra Resort and pressurised her to do immoral acts. However, deceased refused to do so and it can be reasonably be assumed that she may disclose in public the immoral activities

going on in the resort and being apprehensive that the disclosure shall bring a bad name to the resort, the accused committed her murder and take out her on the pretext cheering her up to Rishikesh and on the way back, they threw into a canal near Kanau Bridge, which is in between Pashulok barrage and resort. Consequently, accused on the basis of concocted story, lodged a missing report of the deceased with the revenue police with intention to mislead the investigation of the case. The aforesaid report was premediated act of the accused, which goes to show criminal mind set, which can further be inferred from the criminal history of accused Pulkit Arya, who has several cases pending against him apart from the present one. He is accused in case crime no. 595 of 2016 registered under Section 109, 120-B, 34, 419, 420, 459, 471 of the Penal Code in Police Station - Kotwali, Haridwar and in case crime no. 179 of 2009 under Section 447 of the Penal Code, Police Station - Bahadrabad, District Haridwar.

5. The respondents deny that SIT is conducting a biased investigation and is trying to shield certain high profile persons. It is further stated that in the course of investigation, the SIT and forensic team had examined the room where the deceased was staying in the resort and after that the resort was demolished. It is also borne out from the records that rooms of other accused persons inside the resort were also forensically examined, in the course of investigation, by the SIT lead by Ms. P. Renuka Devi, DIG of Police. The District Mobile Forensic Team conducted photography and videography of the room and collected the belongings of the deceased. The forensic team could not find any possible evidence like finger print or biological evidence. The mobile phones of Ankit, Pulkit and Saurabh Bhaskar were also seized.

6. The old mobile phone of accused Pulkit and deceased could not be recovered, as he thrown the same into Cheela canal. Despite all efforts mobile phones could not be retrieved including tracking their international mobile equipment identity number. The SIT also mentioned that as per CDR and IDPR data, the last location of the phone of deceased was near Cheela canal. Pulkit has started using new phone, which has been sent for forensic examination to Scientific Laboratory.

7. The allegations made by the petitioners that post mortem examination of the deceased was not conducted properly. The respondents stated that a panel of doctors of the All India Institute of Medical Sciences, Rishikesh (hereinafter referred to as "AIIMS" for brevity) had conducted the post mortem examination on the dead body of the deceased. A copy of the post mortem examination was shown to the father and brother of the deceased on 30.09.2022. A hard copy thereof has also been provided to the father of the deceased, who is petitioner no. 2 in this case.

8. Respondents further state that no complaint has been received by SIT alleging intimidation of any witness. District police have been directed to ensure adequate security and safety to the witnesses. It is stated that the investigating team is in constant touch with the witnesses and they have received no intimidation or threat. Respondents have also submitted that petitioner no. 1 is instigating the public at large to influence investigation. There are four criminal cases pending against him. However, Shri J.S. Virk, learned Deputy Advocate for the State would submit that they do give much importance to such pleas at present.

9. A rejoinder affidavit has been filed by the petitioner no. 1 in this case. In the rejoinder affidavit filed by petitioner no. 1, he alleges that after lodging the missing report till transfer of the case to regular police, nothing substantial was done by the investigating officer of the Revenue Authority. Statements of the accused were recorded by they are of no evidentiary value. Even after, arrest of the accused, no police remand was sought and no custodial interrogation of the accused was done. It is also stated by him that after the father of the deceased has made specific allegation that she was raped before being murdered but no female doctor was present at the time of post mortem examination. The dead body of the deceased was recovered on the 6<sup>th</sup> day of the death of deceased. The doctor, who has conducted the post mortem examination, has stated that deceased died due to drowning but no diatom test was conducted. It is also submitted that one material witness namely Pushp Deep Barodiya, who happens to be the friend of the deceased, with whom she had exchanged whatsapp messages had not been examined and his statement has not been recorded under Section 164 of the Code.

10. However, during the course of hearing of the writ petition, learned Deputy Advocate General would submit that initially, his statement could not be recorded under Section 164 as he belongs to Jammu ( but later on, the investigating team has secured his attendance and his statement under Section 164 of the Code has been recorded).

11. Petitioner no. 1 further submits that electronic evidence including DVR, hard disc, mobile phones are crucial evidence but they are either missing or said to have been corrupted or not working, which raises serious doubt, about the manner

investigation is being done in the matter. The main contention raised by petitioner no. 1 is that deceased was being forced to give illegal service to high profile person and as yet, they have not named the high profile person(s).

12. Another rejoinder affidavit has been filed by father of the victim, who is petitioner no. 2 inter alia repeated the stand taken by the petitioner no. 1 but he further added that petitioner no. 1 has helped him in securing justice for his deceased daughter and the money, which he has collected from various sources, has been given to him. It has also been stated that he has been given ex gratia amount of Rs. 25,00,000/- by the State. In the course of hearing, learned counsel for the petitioners would submit that this is rarest of rare case, as SIT has failed to restore / achieve the confidence of general public, therefore, the investigation of the case should be handed over to the CBI or any other Central Police Agency.

13. In sum and substance, learned counsel for the petitioners raised following points:

“i. The SIT is investigating the case in a biased manner.

ii. Scene of crime was demolished on the direction of the MLA of the said area.

iii. Brother of the main accused is the Vice Chairman of the Scheduled Caste Commission in the State of Uttarakhand.

iv. Father of the main accused Pulkit Arya is Ex-State Cabinet Minister and is an influential person belonging to Ruling party.



v. There was a statement of Addl. Superintendent of Police, which is recorded by him in his mobile phone that duty of seizing and sealing the property is in the hand of the SDM.

vi. Ayurvedic factory of Pulkit Arya was burnt, which is adjacent to the resort.

vii. Six days, after the murder of deceased, the post mortem was conducted that too without presence of a female doctor.

viii. From whatsapp chat messages of deceased with Pushp Deep Badodiya, it is clear that deceased was being pressurized by Pulkit to serve high profile person(s). Pushp Deep Badodiya, who happens to be the friend of deceased, has not been examined properly so that he could identify the high profile person.

In support of his contention, learned counsel for the petitioners would also rely upon the judgments of Hon'ble Supreme Court in the case of **Rhea Chakraborty Vs. State of Bihar and others, (2020) 20 SCC 184**, and **Arnab Ranjan Goswami Vs. Union of India, (2020) 14 SCC 12**.

14. It is also argued very emphatically by learned counsel Shri Navnish Negi that the SIT is trying to malign the image of petitioner no. 1, who is a freelance journalist having degree of LLB and Masters in Tourism and though having no formal training in mass communication. He would also point out that there was no statement as to who was that VIP guest who visited the resort. Bed sheet of the room (where the deceased was allegedly assaulted) was not seized by the SIT; police did not

pray for police remand of the accused and the State Government is trying to silence the voice of petitioners by paying ex-gratia amount of Rs. 25,00,000/- to the petitioners no. 2 and 3.

15. Shri J.S. Virk, learned Deputy Advocate General would submit that three days after the incident, the accused have been arrested and sent to judicial remand. Two very competent doctors of AIIMS had conducted the post mortem examination on the dead body of the deceased. Death of the deceased was found to be caused due to drowning and there was neither any sign of rape nor there is any sexual assault on her. Statements of Shivam, Abhinav, Vivek Arya, Aman Rai and Kushraj have been recorded under Section 164 of the Code and whatsapp chat of Ayush has also been seized.

16. Before taking up the case on merit, it is proper on our part to take into consideration the various judgments rendered by Hon'ble Supreme Court in similar cases. The Constitution Bench of the Hon'ble Supreme Court in the case of **State of West Bengal and others Vs. Committee for Protection Democratic Rights, West Bengal, (2010) 3 SCC 571**, has examined the legality of the order passed by High Court in handing over the investigation of the case involving the offences under Sections 148, 149, 448, 436, 364, 302, 201 of the Penal Code read with Sections 25/27 of the Arms Act, 1959 and Section 9-B of the Explosives Act, 1884, in which on political rivalry several persons were killed by some miscreants persons numbering 50-60 on 04.01.2001. After taking into consideration various aspects, the Constitution Bench of the Hon'ble Supreme Court has held that *in the final analysis direction of the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the*

*Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, the Supreme Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly. However, before parting with the judgment the Hon'ble Supreme Court has further held that it deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigation.*

17. Similar view has been taken by the Hon'ble Supreme Court in the case of **Sakiri Vasu Vs. State of Uttar Pradesh and others, (2008) 2 SCC 409**, wherein the Hon'ble Supreme Court in paragraph 10 of the said judgment has held that *it has been held by this Court in CBI v. Rajesh Gandhi (1996) 11 SCC 253 that no one can*

*insist that an offence be investigated by a particular agency. We fully agree with the view in the aforesaid decision. An aggrieved person can only claim that the offence he alleges be investigated properly, but he has no right to claim that it be investigated by any particular agency of his choice.*

18. In paragraph 33 of the said judgment, the Hon'ble Supreme Court has held that *in the case of Secy., Minor Irrigation & Rural Engg. Services, U.P. v. Sahngoo Ram Arya (2002) 5 SCC 521, the Supreme Court observed that although the High Court has power to order a CBI inquiry, that power should only be exercised if the High Court after considering the material on record comes to a conclusion that such material discloses prima facie a case calling for investigation by CBI or by any other similar agency. A CBI inquiry cannot be ordered as a matter of routine or merely because the party makes some allegation.*

19. In the case of **Securities and Exchange Board of India Vs. Sahara India Real Estate Corporation Ltd. (2014) 8 SCC 766** while considering the issue of investigation into financial scam whereby a number of fake companies had collected money, as investment from gullible investors, but were not refunding them, the Hon'ble Supreme Court taking it as national ramification, directed for transfer of case to CBI.

20. In a recently decided case, the Hon'ble Supreme Court in the case of **Himanshu Kumar Vs. State of Chattisgarh** **2022 SCC online SC 884** has also reiterated the same principle at paragraph 44 of the judgment that *it is now settled law that if a citizen, who is a de facto complainant in a criminal case alleging commission of cognizable offence affecting violation of his legal or fundamental rights against high Government officials or influential persons, prays before a Court for a direction of investigation of the said alleged offence by the*

*CBI, such prayer should not be granted on mere asking. In an appropriate case when the Court feels that the investigation by the police authorities is not in a proper direction, and in order to do complete justice in the case and if high police officials are involved in the alleged crime, the Court may be justified in such circumstances to handover the investigation to an independent agency like the CBI. By now it is well-settled that even after the filing of the charge sheet the court is empowered in an appropriate case to handover the investigation to an independent agency like the CBI.*

21. The extraordinary power of the Constitutional Courts under Articles 32 and 226 respectively of the Constitution of India *qua* the issuance of directions to the CBI to conduct investigation must be exercised with great caution as underlined by the Hon'ble Supreme Court in the case of **Committee for Protection of Democratic Rights, West Bengal** (supra) as adverted to herein above, observing that although no inflexible guidelines can be laid down in this regard, yet it was highlighted that such an order cannot be passed as a matter of routine or merely because the parties have levelled some allegations against the local police and can be invoked in exceptional situations where it becomes necessary to provide credibility and instil confidence in the investigation or where the incident may have national or international ramifications or where such an order may be necessary for doing complete justice and for enforcing the fundamental rights. We are conscious of the fact that though a satisfaction of want of proper, fair, impartial and effective investigation eroding its credence and reliability is the precondition for a direction for further investigation or re-investigation, submission of the charge sheet *ipso facto* or the pendency of the trial can, by no means, be a prohibitive impediment.

22. Thus, from examination of aforesaid judgments passed by the Hon'ble Supreme Court, following principles emerge for transfer of investigation to any centralised agency:

i. Investigation of a criminal case cannot be transferred to Centralized agency from regular police on mere asking.

ii. The High Court has ample power under Article 226 of the Constitution of India to give such direction to the CBI to investigate the case but such order should be passed with great caution in rare and exceptional case, it cannot be passed as a matter of routine.

iii. Cases involving national and international ramifications can also be transferred to the CBI.

iv. When the Court comes to the conclusion that State Police is not conducting proper, fair, impartial and effective investigation eroding its credence and reliability, then also such order of transfer of investigation can be passed.

23. On the contrary, learned counsel for the petitioners relies upon the judgment of the Division Bench of Jharkhand passed in **WPPIL No. 2696 of 2021** dated 03.08.2021, which was taken by the Division Bench on its own motion, who directed that the investigation of case should be transferred to CBI, when the credibility of the investigating agency is lost. The aforesaid case relates to murder of an Additional District Judge of Dhanabad, who was murder in the early hour of the day, when he was taking a walk in morning on the road. The facts of that case are different from the present case.

24. He has also placed reliance on the judgment of **Punjab and Haryana High Court Bar Association, Chandigarh through its Secretary Vs. State of Punjab, (1994) 1 SCC 616**, where the entire family of an advocate were murdered. The Supreme Court set aside the order passed by the Punjab and Haryana High Court and held that the High Court was wholly unjustified in closing its eyes and ears to the controversy which had shocked the lawyer fraternity in the region. It was further observed for the reasons best known to it, the High Court became wholly oblivious to the patent facts on the record and failed to perform the duty entrusted to it under the Constitution. After giving our thoughtful consideration to the facts and circumstances of that case, the Hon'ble Supreme Court was of the view that the least the High Court could have done in that case was to have directed an independent investigation/inquiry into the mysterious and most tragic abduction and alleged murder of the Advocate and his family.

25. Learned counsel for the petitioners has also relied upon the reported case of Guwahati High Court in the case of High Court Bar Association Vs. State of Manipur (2012) 1 Guahati Law Reports 753. In this case, the Imphal Bench of Guahati High Court while considering the high handedness of the police, has come to the conclusion that case should be investigated by CBI.

26. Now, coming to the merits and contentions raised by learned counsel for the petitioners in the present case, this Court would propose to take up each issue raised by learned counsel for the petitioners - Smt. Pushpa Joshi, learned Sr. Advocate and Shri Navnish Negi but before proceedings with merits of each submission made by learned counsel for the petitioner, it is appropriate to take note of the fact of the case that because of the

peculiar terrain of State of Uttarakhand, prior to independence investigation power of police like investigation, arrest has been entrusted to revenue authorities and in a large number of cases we have seen Revenue Authorities especially in the Hilly districts conducted investigation of the case. It is also brought to the notice of this Court that Revenue Inspector had conducted several investigations and it has led to conviction of a large number of persons also, however, this Court had already directed that the concept of investigation of crimes by Revenue Authorities is not proper, the State should take a decision to abolish the same. Though it was continuing at the time this occurrence that took place in this case, we have been informed that the State Cabinet has taken a decision to abolish the system of investigation by the Revenue Police and decided to set up police stations in several hill districts. However, this is not dispute here, so we are not dwelling upon in great detail regarding the validity of the investigation etc. by the revenue police authorities.

27. Be that as it may, even the informant and father of the victim girl had approached the revenue authorities and there is allegation that revenue police did not take proper steps for investigation. Later on, the regular police took up the investigation and SIT was constituted headed by a senior officer of the police department to investigate the case.

28. Learned counsel for the petitioners would submit that the SIT is indulged in a biased investigation. The first thing that has been highlighted is that there is no forensic examination of the crime scene which is stated to be the room occupied by the deceased in the resort, in question. However, the SIT head Ms. P. Renuka Devi, DIG, Police, who was present in the court, has produced the video recording of the forensic team examining the



room. Though no incriminating article was found in the shape of any DNA or finger print.

29. Learned counsel for the petitioners would argue that bed sheet lying upon the bed in the room was not seized, which shows that it is a biased investigation, however, this Court found that the scientific team did not only examine of the room of the deceased but also examined the rooms occupied by accused. It is only fortuitous that they did not get any forensic evidence therein. That itself cannot be a ground to state that investigation is proceeding in a biased manner or in a wrong direction.

30. The second most important argument advanced by the learned counsel for the petitioners would be that crime scene was destroyed, even prior to the forensic examination of the room. This is factually incorrect. The room was forensically examined and on the next date, admittedly the room was destroyed. Respondents say that it is not only that particular room but entire resort was demolished. In this connection, various reports come in the newspapers. The statement of MLA of the local area has also been recorded by the investigating agency. It appears to this Court that conduct of the destroying the resort where in a room the deceased staying was also destroyed is not a deliberate attempt to destroy the evidence but it is more of a knee jerk reaction and sentimental outburst of the local leaders. So on that basis, this Court is of the opinion that it cannot be said that investigation is not moving in a wrong direction.

31. Brother of the main accused is stated to be Vice Chairman of the Scheduled Caste Commission but it is brought to our notice that in the meantime, he has resigned from post and then, he was expelled from the party. Father of the accused, who happens to be the Ex-State Cabinet Minister, has also resigned from the party

but the respondents claim that he has been expelled from the membership of the party.

32. As far as recording of the Additional Superintendent of Police is concerned, he has stated that power of seizure lies with the SDM, it may be under a mistaken impression that SDM was supervising the case being the area Magistrate. Hence, the said recording of phone, which was played by learned counsel for the petitioners in the Court, at the time of hearing of the case will not lead to this Court to hold that it is a biased investigation.

33. Moreover, burning of the Ayurvedic Factory, which according to learned counsel for the petitioners, would have forensic evidence in it, is not attributed to a particular person. It is not known whether it was an accidental fire or some person has deliberately burnt the Ayurvedic factory because Pulkit's resort is situated next to it. It is not the case of the petitioners that the investigating agency or any person from the State representing the State machinery has burnt down the Ayurvedic factory.

34. So far as the conduct of the post mortem examination on the dead body of the deceased by two Specialist doctors from AIIMS is concerned that this Court is of the opinion in the given circumstances, these are two best doctors available and the SIT directed them to conduct post mortem examination. Learned counsel for the petitioners has not placed any authority to show that in cases of rape and murder, post mortem examination has to be done by a female doctor.

35. During the hearing of the writ petition, learned counsel for the petitioners would very emphatically submit that deceased was complaining that she was being pressurized by Pulkit - the main accused to indulge in immoral trafficking and to serve some

high profile person but he has not stated about anything in his alleged confession made before the police and this is the reason learned counsel for the petitioners would submit that the investigating agency should have prayed for polygraphic test and narco analysis test of all the accused. It has been held by the Hon'ble Supreme Court in the case of **Selvi v. State of Karnataka, (2010) 7 SCC 263**, that *forcing an individual to undergo any of the impugned techniques violates the standard of "substantive due process" which is required for restraining personal liberty. Such a violation will occur irrespective of whether these techniques are forcibly administered during the course of an investigation or for any other purpose since the test results could also expose a person to adverse consequences of a non-penal nature. The impugned techniques cannot be read into the statutory provisions which enable medical examination during investigation in criminal cases i.e. the Explanation to Sections 53, 53-A and 54 of the Code of Criminal Procedure, 1973. The Hon'ble Supreme Court has further held that no individual should be forcibly subjected to any of the techniques in question, whether in the context of investigation in criminal cases or otherwise. Doing so would amount to an unwarranted intrusion into personal liberty.* However, the Hon'ble Supreme Court left room for the voluntary administration of the impugned techniques in the context of criminal justice provided that certain safeguards are in place. Even when the subject has given consent to undergo any of these tests, the test results by themselves cannot be admitted as evidence because the subject does not exercise conscious control over the responses during the administration of the test. However, any information or material that is subsequently discovered with the help of voluntarily administered test results can be admitted in accordance with Section 27 of the Evidence Act, 1872. The Hon'ble Supreme Court quoted the guidelines published by the National Human Rights Commission had

published for the Administration of Polygraph Test (Lie Detector Test) on an Accused in 2000. These Guidelines should be strictly adhered to and similar safeguards should be adopted for conducting the “narcoanalysis technique” and the “Brain Electrical Activation Profile” test.

36. In any case, the Narco Analysis and Polygraphic test can be conducted by police after complying the observations of Hon’ble Supreme Court in the case of **Selvi v. State of Karnataka, (2010) 7 SCC 263**, for bringing out clues for further process of investigation.

37. After closure of hearing of the case, it was informed by the head of the SIT that in the meantime, SIT has taken a decision of subjecting three accused persons to polygraphic and narco analysis test. Two of them have already consented to undergo for the same, however, one of the accused – Saurabh has sought 10 days time to respond to it. Accused Pulkit Arya has also given conditional consent to the effect that entire narco test should be conducted by taking appropriate video recording of the same. The applications are pending before the learned Chief Judicial Magistrate, Pauri Garhwal. Since Saurabh has asked for ten days time, considering the request of the investigating Officer to subject the accused persons to polygraphic test and narco analysis test, learned Magistrate has fixed 22.12.2022 for hearing on the application filed by the SIT. Thus, the SIT is taking all efforts to have polygraphic and narco analysis test of all the three accused. Therefore, if all the accused consented to Narco Analysis and Polygraphic test, then the grievance of the petitioners that SIT has not taken steps for aforesaid test will be redressed.

38. If at all, any undue service was to be given to any high profile person(s), for which the deceased was being persuaded

and forced to indulge in such illegal immoral activity, then it will come to the fore in such test. Whether such statements made would be admissible or not is question to be decided by the trial court.

39. Learned counsel for the petitioners would also rely upon the judgment in the case of **Arnab Ranjan Goswami Vs. Union of India (2020) 14 SCC 12**. In this case, multiple FIRs were lodged against a journalist in different States arising out of a same cause of action that news and views discussed by him in a TV show in respect of a particular incident, which took place in the State of Maharashtra. The Hon'ble Supreme Court held that filing of multiples FIRs causes intervention into petitioner's right as citizen and as a journalist to fair treatment under Article 14. Filing of multiple FIRs would stifle right of petitioner as journalist to ensure an informed society and also destroy his freedom as a citizen to know affairs of governance of the nation. In that view of the matter, the Hon'ble Supreme Court has transferred a number of FIRs lodged in different police stations to one police station in Maharashtra. The facts of that case are different from the fact of this case.

40. In the case of **Rhea Chakraborty Vs. State of Bihar (2020) 20 SCC 184**, the Hon'ble Supreme Court was considering to transfer of the investigation from the State of Bihar to State of Maharashtra. The facts of that case are that a young leading artist working in the field of cinema was allegedly murdered. His girlfriend was proceeded against, by FIR filed by his family members of that film actor in Bihar. That case was transferred from Bihar to CBI. Hence, the aforesaid case also has no relevance to the present case.

41. Learned counsel for the petitioners would submit that police are trying to malign the name of petitioner no. 1. It is stated that immediately after this incident, the petitioner no. 1 raised hue and cry regarding missing and murder of another girl, who was working earlier in the same resort, which was found to be false. We do not give much importance to such allegation made therein and in view of the fact that Deputy Advocate General did not raise this issue with much emphasis at the time of hearing of the writ petition.

42. Shri Navnish Negi, learned counsel for the petitioners would further submit that parents of the deceased have been given ex gratia amount of Rs. 25,00,000/- and that is a ground for believing that State Government is trying to silence the petitioners no. 2 and 3 from raising the issue. This Court carefully examined the rejoinder affidavit filed by respondent no. 2 wherein it is admitted by him that he has received the ex-gratia from the State Government but he does not state specifically that while granting such ex-gratia, he was either impressed upon or persuaded by any State Government Officer / official not to agitate the matter. So that contention of Shri Navnish Negi, learned counsel for the petitioners does not appear to be based on any material available on record.

43. Thus, in ultimate analysis, this Court is of the considered and firmed opinion that though there may be some initial hiccups at the initial stage of the investigation while the revenue Inspector and regular police were investigating the case before formation of SIT but it cannot be stated that the investigation of the case is proceeding in improper direction with biased attitude. Though the case is definitely sensitive one in view of the fact that a young girl has been killed and some people is protesting the

way investigation is going on, it cannot be said that the investigation is going in a direction to protect any particular high-profile person. It is the view of this Court that the SIT led by a Police Officer in the rank of DIG, who hails from different State having obviously no political inclination being a member of IPS cadre and is doing reasonably good job of investigation. It is true that petitioners wants the investigation should go in a particular line but investigation requires expertise and it is investigating officer who know how to proceed with the investigation of the case.

44. In that view of the matter, we are of the opinion that there is no merits in the writ petition, therefore, the same is dismissed. Keeping in view the fact that the case has drawn a lot of media attention, we direct the State Government to appoint a Special Public Prosecutor having sufficient experience and expertise in handling criminal cases to prosecute the accused persons. Steps be taken for fast tracking the trial of the case.

**(Sanjaya Kumar Mishra, J.)**

(Grant urgent certified copy of this judgment, as per Rules)

SKS